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Date of Decision: 11th October 1995

SPECIAL CIVIL APPLICATION NO. 4429 of 1990

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Shri D.U. Shah, Advocate, for the Petitioner

Shri M.R. Anand, Government Pleader, with Shri D.N. Patel,  
Asst. Government Pleader, for the Respondents  
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CORAM: A.N. DIVECHA, J.  
(Date: 11th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 29th October 1986 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 21st November 1989 in

Appeal No. Rajkot-25 of 1987 is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1806.54 square meters.

2. The facts giving rise to this petition move in narrow compass. The petitioner as a partnership firm filed its declaration in the prescribed form under sec. 6(1) of the Act with respect to its holding within the urban agglomeration of Rajkot. It was duly processed by respondent No.1 and, by his order passed on 29th October 1986 under sec. 8(4) of the Act, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1806,54 square meters. Its copy is at Annexure C to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec.33 of the Act. A copy of the memo of appeal is at Annexure D to this petition. It came to be registered as Appeal No. Rajkot-25 of 1987. By the order passed on 21st November 1989 in the aforesaid appeal, respondent No.2 rejected it. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure E to this petition.

3. The main submission urged by learned Advocate Shri Shah for the petitioner is based on the Ribbon Development Rules. Both the authorities below have given a concurrent finding that the road in question was formerly known as Rajkot-Morvi Road but at the relevant time it was reduced to an approach road running between Lakhajiraj station and Rajkot-Morvi Road. In that view of the matter, the building line and the control line applicable to the state high way was not found applicable to the land in question. This is a finding of fact and it is not found or shown to be perverse in any manner. I am therefore of the opinion that the authorities below have rightly not excluded the portion of the land on the basis of the Ribbon Development Rules from the holding of the petitioner.

4. The petitioner is obviously a partnership firm and it will answer the definition of "person" contained in sec. 2(i) of the Act. In that view of the matter, both the authorities below were justified in not granting any separate unit to partners of the petitioner firm.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure E to this

petition calls for no interference by this court in this petition under Art. 226 of the Constitution of India.

6. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

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